



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MQB - 177348

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 12, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department regarding Medical Assistance (MA), a hearing was held on November 10, 2016, by telephone.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly determined the Petitioner is over the asset limit for [REDACTED] benefits.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On June 17, 2016, the Petitioner submitted a renewal. He submitted a bank statement from [REDACTED] reporting a savings account with a balance of \$9,301.12 as of May 23, 2016.

3. On June 29, 2016, the agency issued a Notice of Decision to the Petitioner informing him that he was not enrolled in [REDACTED] effective August 1, 2016 due to assets exceeding the program limit. The notice further informed him of the right to appeal the agency determination by filing a request for a hearing with the Division of Hearings and Appeals no later than September 16, 2016.
4. On October 12, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA benefits, including [REDACTED], must be filed within 45 days of the date of the action. Sections 49.45(5) and 49.21(1), Wis. Stats.; Income Maintenance Manual, Chapter 1, §1.2.3. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 73 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

As dicta, I note that the Petitioner did not dispute that he had assets of over \$9,000. He provided a copy of a written statement that he has always intended for those funds to be used for his burial. It is possible that some of those funds may be exempt as burial funds. However, the agency had not received any information from the Petitioner regarding the designation of burial funds at the time of his renewal. The Petitioner was advised to submit the information to the agency for its review and consideration.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal was untimely.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of January, 2017

\s\_\_\_\_\_  
Debra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 3, 2017.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability